Supreme Court, U.S.
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No. 89-1718

IN THE
Supreme Court of the United States
OCTOBER TERM, 1989

BANQUE DE PARIS ET DES PAYS-BAS,
Petitioner,

v.

EXXON COMPANY, U.S.A.,
A DIVISION OF EXXON CORPORATION,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF IN OPPOSITION

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QUESTION PRESENTED

This diversity case is governed by Texas law. Because the Fifth Circuit's previous judgment did not take into account the intervening and conflicting decision in *Kerr Construction Co. v. Plains National Bank*, 753 S.W.2d 181 (Tex.App. —— Amarillo 1987, writ denied), this Court vacated and remanded with instructions to reconsider in light of that decision. 109 S. Ct. 299 (1988).

The question now presented is whether the Fifth Circuit properly followed those instructions on remand.*

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* Respondent Exxon Company, U.S.A., is a division of Exxon Corporation. Exxon Corporation's affiliates and partially owned subsidiaries are listed in Appendix A, *infra*.

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No. 89-1718

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BRIEF IN OPPOSITION

STATEMENT

1. In 1981, respondent Exxon Company, U.S.A. ("Exxon"), and Houston Oil & Refining, Inc. ("Houston Oil"), entered into a contract to make reciprocal deliveries of crude oil. Exxon agreed to deliver 558,000 barrels of crude oil to Houston Oil during July, 1981, and Houston Oil agreed to deliver an equal quantity of crude oil to Exxon "*during* September through December 1981." Pet. App. G at 37 (emphasis in original). The contract required Houston Oil to provide an irrevocable standby letter of credit to cover the crude oil being delivered by Exxon. This was standard commercial practice; pursu-

ant to a letter of credit, an issuing bank undertakes to pay a beneficiary (here, Exxon) upon certification that the bank's customer (here, Houston Oil) has failed to perform an underlying contract.

Houston Oil applied to petitioner Banque de Paris et des Pay-Bas ("Paribas") to issue a letter of credit in the amount of $19,530,000. Paribas issued the requested letter of credit in return for a fee of $53,000. Pet. App. G at 37. A copy of the letter of credit was delivered to Exxon as the beneficiary. *Id.* at 38.

The letter of credit was payable only upon the presentation, *inter alia*, of a signed statement certifying that Houston Oil "*has failed to deliver* [the crude oil] *between September and December*, 1981." Pet. App. G at 37 (emphasis in original). That statement, however, was required to "be presented not later than October 31, 1981." *Id.* at 38. Paribas itself was aware of "the apparent inconsistency" in these terms, under which "the letter [of credit] expired *on October 31*, yet covered deliveries *between September and December*." *Id.* (emphasis in original). Yet "Paribas never sought to amend the letter to remove the contradiction or to notify Exxon." *Id.* at 47.

Exxon delivered 558,000 barrels of crude oil to Houston Oil in July, but Houston Oil never made the required reciprocal deliveries of crude oil to Exxon. "Exxon learned sometime in November that [Houston Oil] was going to default." Pet. App. G at 47. Exxon "presented the certification of . . . default to Paribas on November 30, 1981, and again on December 1, 1981. Paribas rejected both presentments as untimely." *Id.*

2. Exxon then instituted this action against Paribas in the 234th Judicial District Court of Harris County, Texas, to recover on the letter of credit. Paribas removed the case to the United States District Court for the Southern District of Texas, where jurisdiction rested

on 28 U.S.C. § 1332(a)(2). The case came before District Judge Hughes, who had been a Texas state court judge before his appointment to the federal bench. 1 *Almanac of the Federal Judiciary*, Fifth Circuit at 34-35 (1989).

Judge Hughes ruled for Exxon on cross-motions for summary judgment. The central problem in the case, the judge recognized, was that the terms of the letter of credit appeared to cancel one another and render performance impossible:

> Two provisions of the letter clash. The certification provision requires that in order to collect under the letter, Exxon must certify that [Houston Oil] failed to deliver the required volume of crude in September-December. On the other hand, the presentment clause requires the certification of nondelivery to be made by October 31, 1981. . . .
>
> . . . Obviously Exxon could not have certified on October 31 that [Houston Oil] had not delivered through the end of the following two months.

Pet. App. G at 47-48.

To resolve the parties' dispute over the meaning of these conflicting provisions, Judge Hughes invoked three rules of Texas law: (1) "letters of credit are subject to the same rules of construction that apply to ordinary contracts;" (2) "[i]nconsistencies must be resolved against the party who drew the contract;" and (3) "contracts must be construed to render performance possible." Pet. App. G at 47-48. The judge cited two decisions of the Texas Supreme Court—*Temple-Eastex, Inc. v. Addison Bank*, 672 S.W.2d 793, 798 (Tex. 1984), and *Republic National Bank v. Northwest National Bank*, 578 S.W.2d 109, 115 (Tex. 1978)—as authority for these well established rules.

Because Paribas was the party who drew the contract, and because Paribas' construction of the contract would

make it impossible for Exxon to make timely presentation for payment (and thereby would render illusory the undertaking for which Paribas had charged a fee), Judge Hughes concluded that these rules of Texas law dictated "[a] construction in favor of Exxon." Pet. App. G at 48. He held that the letter of credit must be read to give Exxon an opportunity to make presentation for payment upon Houston Oil's failure to deliver within the period specified in the certification provision. This conclusion, the judge noted, was supported by the result in *BA Commercial Corp. v. Hynutek, Inc.*, 705 S.W.2d 713 (Tex.App. —— Dallas 1986, no writ), which had decided the same issue in the context of a letter of guaranty. *Id.*

3. A divided panel of the Fifth Circuit reversed. Paribas incorrectly states that the panel majority "drew heavily on well-established principles of Texas letter of credit law," Pet. 3, and "focused upon and analyzed the key decisions of the highest state court." Pet. 7. The majority's opinion did "not rest its conclusions upon its appraisal of Texas law or Texas decisions." *Griffin v. McCoach*, 313 U.S. 498, 503 (1941). Although the majority formally made reference to the Texas version of the Uniform Commercial Code, its only acknowledgments of Texas decisional law consisted of citations to *Republic National Bank* and *Hynutek* for propositions unrelated to the central merits of the case. *See* Pet. App. G at 41 n.7, 42 n.15, 43 n.18.

Instead of making a conscientious effort to apply Texas law, as Judge Hughes had done, the panel majority ignored the Texas rule that letters of credit are construed like other contracts. Instead, the majority reasoned that letters of credit are different from other contracts and must be construed with solicitude for the commercial interests of the issuing bank. Citing a diverse body of non-Texas decisional law and legal treatises, handbooks, and other non-Texas authorities (none of which was

directly on point), the majority reversed, holding that "the obligation of the issuing bank had terminated even though it might not have been possible to present to the bank the documents required for payment before the expiry date." Pet. App. G at 36.

Judge Garza, who was the only Texas lawyer on the panel, *see* 2 *Almanac of the Federal Judiciary*, Fifth Circuit at 16-17, dissented on the ground that the panel majority had failed to follow Texas law:

> The majority, focusing on the expiry date and nothing else, in effect makes the letter of credit involved in this case a nullity. . . .
>
> I am convinced that the Texas judge sitting on the court below, interpreting the letter of credit under Texas law, was correct.

Pet. App. G at 45-46.

4. Shortly thereafter, the Court of Appeals for the Seventh District of Texas at Amarillo had occasion to consider the same issue in *Kerr Construction Co. v. Plains National Bank*, 753 S.W.2d 181 (Tex.App. —— Amarillo 1987, writ denied). The Texas court's opinion was not, as Paribas now claims, "unreasoned." Pet. 6.

Like Judge Hughes in this case, the Texas court began by citing *Temple-Eastex* for the "well settled" precept that in Texas "rules of construction for ordinary contracts govern letters of credit." 753 S.W.2d at 184. Applying traditional maxims of construction, which the court supported with citations to other Texas decisions, the court held, also like Judge Hughes, that a letter of credit with inconsistent terms relating to certification and expiration must be construed to give the beneficiary an opportunity to make presentation for payment upon the failure of the bank's customer to perform the underlying contract within the period specified in the certification provision.

5. Exxon called *Kerr Construction* to the attention of the Fifth Circuit in motions for recall of mandate and for leave to file a second suggestion for rehearing *en banc*, but those motions were denied. Pet. App. J and K. This Court then granted certiorari and subsequently vacated and remanded for further consideration in light of *Kerr Construction*. 109 S. Ct. 299 (1988).

6. On remand, the panel majority initially professed itself "unable to determine whether *Kerr* correctly states Texas state law, and if it does, how that decision affects the issues here presented." Pet. App. D at 26. Accordingly, the court certified the controlling issue of law to the Texas Supreme Court pursuant to Texas Rule of Appellate Procedure 114. *Id.* at 22. *See also* Pet. App. C.

Judge Garza dissented, observing that although *Kerr Construction* "is virtually indistinguishable on the relevant facts from the case sub judice . . . , my brothers from Louisiana and Mississippi continue to resist the application of controlling Texas precedent." Pet. App. D at 27. Judge Garza believed that *Kerr Construction* was correct as a matter of Texas law, and he pointed out that "the Texas Supreme Court denied writ in the very case [*Kerr Construction*] that answered the question presented for certification." *Id.* at 28.

7. The Texas Supreme Court, which as Judge Garza stated had denied review in *Kerr Construction*, likewise declined to accept certification in this case. The court explained that the narrow question of state law that the Fifth Circuit had certified "was dependent upon issues of fact." Pet. App. B.

8. The Fifth Circuit thereupon undertook to reconsider this case in light of *Kerr Construction*. The court began its analysis with the rebuttable presumption that *Kerr Construction* had been correctly decided as a matter of Texas law:

> A federal court sitting in diversity is bound to follow decisions of the state's intermediate appellate

> courts unless it is "convinced by other persuasive data that the highest court of the state would decide otherwise." There is, therefore, a working presumption that state intermediate appellate court decisions represent accurate statements of state law.

Pet. App. A at 3, quoting *West v. AT&T*, 311 U.S. 223, 237 (1940).

The court then proceeded to consider and reject on the merits each of Paribas' arguments concerning why *Kerr Construction* should not be considered good Texas law. In particular, the court noted that "although Paribas argues that *Kerr* is incompatible with several cited Texas Supreme Court cases, these cases bear only tangentially on the issue raised in *Kerr*." Pet. App. A at 5 (footnote omitted). The court additionally noted that "[t]he reasons that the Texas Supreme Court gave for refusing to accept certification of the question that we posed to it lends further support to the conclusion that *Kerr* is not to be disregarded. Were *Kerr* not authoritative, the resolution of this case would not turn solely upon 'issues of fact.'" *Id.*

The Fifth Circuit recognized that the crucial difference between *Kerr Construction* and its own earlier decision in this case was the application by the Texas court of the rule that letters of credit are governed by the same maxims of construction as ordinary contacts. Pet. App. A at 7. Applying that rule of Texas law, the Fifth Circuit concluded that the "interpretive maxims [of construction] applied in *Kerr* . . . compel the conclusion that the date fixed in the certification provision controls over the expiration date." *Id.* at 8.

The court considered whether "any of the distinctive facts of this case implicate maxims of construction that were not implicated in *Kerr* and that would compel a different interpretation of Paribas' letter of credit." Pet. App. A at 8. But the court concluded that "Paribas has not brought any such maxim of construction to our at-

tention, and we have been unable to think of one." *Id.* Upon reconsideration, therefore, the court affirmed the district court's judgment in favor of Exxon.

ARGUMENT

As the foregoing statement demonstrates, Paribas' petition for a writ of certiorari is based upon a false premise. The Fifth Circuit's opinion on remand does not express, adhere to, or reflect a "deeply-entrenched policy . . . of virtually complete and inflexible deference to the holdings of state intermediate appellate courts." Pet. i. To the contrary, the Fifth Circuit carefully evaluated *Kerr Construction* in light of the other Texas authorities that were brought to its attention. The court then determined, with an admirable degree of intellectual integrity, that *Kerr Construction* was correct as a matter of Texas law and that its own earlier opinion had been incorrect. That determination raises no issue warranting review by this Court.

1. The Fifth Circuit correctly recognized that *Kerr Construction* turned on the proposition that letters of credit are subject to the same rules of construction as other contracts. Pet. App. A at 7. As authority for that proposition, the Texas court in *Kerr Construction* (like Judge Hughes in this case) had cited the decision of the Texas Supreme Court in *Temple-Eastex*. In the latter case, the Texas Supreme Court had stated, in language that could hardly be clearer, "[l]etters of credit are governed by the construction rules of ordinary contracts." 672 S.W.2d at 798. Once the Fifth Circuit had accepted that proposition, as it was bound to do under *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938), the outcome of this case was a foregone conclusion.

The Texas court in *Kerr Construction* had decided that case by applying two maxims of construction, each of which was solidly grounded in Texas precedent. *First*, the court noted that under Texas law "where there is an

irreconcilable conflict between different parts or provisions of an instrument and the first part or provision is definite and certain and irreconcilable with later parts or provisions the first part or provision must prevail." 753 S.W.2d at 184. The Texas Supreme Court has expressly endorsed this "rule which gives effect to an earlier over a later provision." *Southland Royalty Co. v. Pan American Petroleum Corp.*, 378 S.W.2d 50, 57 (Tex. 1964). This rule, in fact, is practically as old as the Texas Supreme Court itself. *See Witt v. Harlan*, 66 Tex. 660, 2 S.W. 41, 42 (1886). Because in this case, as in *Kerr Construction*, the certification provision preceded the expiry date in the letter of credit, the certification provision was controlling.

Second, the court in *Kerr Construction* reasoned that "when there is an irreconcilable conflict between provisions in an agreement, the provision which contributes most essentially to the agreement is entitled to the most consideration." 753 S.W.2d at 184. This also is hornbook law in Texas: "If a variance exists between two clauses in the instrument, . . . the clause which contributes most essentially to the agreement is the one that is entitled to the greater consideration." *Caranas v. Morgan Hosts-Harry Hines Boulevard, Inc.*, 460 S.W.2d 225, 228 (Tex. Civ. App. —— Dallas 1970, no writ), quoting 13 Tex. Jur. 2d *Contracts* § 142 at 323. As the Fifth Circuit correctly recognized, "the certification provision, because it states a condition precedent to the bank's liability, is more 'essential' to the contract as a whole than is the [expiry date]." Pet. App. A at 8.

In short, the Fifth Circuit did not, as Paribas claims, "mechanically defer[]" to *Kerr Construction*. *See* Pet. 6. The court conscientiously identified the rules of Texas law that had been applied in *Kerr Construction*. Then, after determining that no other cited Texas Supreme Court cases and no other maxims of construction pointed in a different direction, the court applied the rules of Texas law identified in *Kerr Construction* to the facts of

this case. That is precisely what the court was supposed to do under *Erie*.

2. Paribas incorrectly contends that the Fifth Circuit applied the wrong standard in determining whether *Kerr Construction* represents good Texas law. Pet. 8-10. To the contrary, the Fifth Circuit quoted from and applied the very standard that was articulated by this Court in *West v. AT&T*, 311 U.S. 233, 237 (1940): the decision of a state intermediate appellate court on an issue of state law "is not to be disregarded by a federal court unless it is convinced by other persuasive data that the highest court of the state would decide otherwise." *See* Pet. App. A at 3. As this Court explained in *Fidelity Union Trust Co. v. Field*, 311 U.S. 169, 177-78 (1940), "[a]n intermediate state court in declaring and applying the state law is acting as an organ of the State and its determination, in the absence of more convincing evidence of what the state law is, should be followed by a federal court in deciding a state question." *See also, e.g., Six Companies of California v. Joint Highway Dist.*, 311 U.S. 180, 188 (1940).

Although Paribas appears to argue that in other cases the Fifth Circuit has applied a more deferential standard than that articulated by this Court in such cases as *West* and *Fidelity Union*, that argument is both wrong and irrelevant. It is wrong, for those other cases do not reflect the "unchallengeable deference," Pet. 8, that Paribas alleges. As is indicated by the very quotation from *Birmingham Fire Insurance Co. v. Winegardner & Hammons, Inc.*, 714 F.2d 548, 550 (5th Cir. 1983), upon which Paribas relies, when confronted with decisions of a state intermediate appellate court the Fifth Circuit remains open to persuasion that "the supreme court of the state would hold differently." *See* Pet. 8. By granting a rebuttable presumption of correctness to such decisions, the Fifth Circuit is acting squarely in line with this Court's own pronouncements.

Paribas' argument also is irrelevant. The Fifth Circuit in this case did not even cite, much less rely upon, the earlier decisions that Paribas criticizes. On petition for a writ of certiorari, the opinion of the lower court must be evaluated on its own merits. Whatever might be said about other decisions of the Fifth Circuit, this case was correctly decided.

3. Paribas incorrectly claims to have identified an internal conflict in this Court's own pronouncements concerning the weight to be given the decision of a state intermediate appellate court. *See* Pet. 10-12. In suggesting that such cases as *West* and *Fidelity Union* have been eroded or superseded by *Commissioner v. Estate of Bosch*, 387 U.S. 456 (1967), Paribas has simply misread *Bosch*.

Bosch was not a diversity case controlled by *Erie*. Neither was it a case that called upon a federal court to determine whether a state intermediate appellate court had correctly decided a matter of state law. The question in *Bosch* was "[w]hether a federal court or agency in a federal estate tax controversy is conclusively bound by a state trial court adjudication of property rights or characterization of property interests when the United States is not made a party to such proceeding." 387 U.S. at 456-57. This question was decided by reference to the intent of Congress in enacting the relevant provisions of the federal estate tax. Relying upon the fact that "the Senate Finance Committee . . . said that 'proper regard,' not finality, 'should be given to interpretations of the will' by state courts . . . ,'" *id.* at 464, the Court held that "federal authorities are not bound by the determination made of such property interest by a state trial court." *Id.* at 457. But while reaching this conclusion, the Court quoted with approval the very passage from *West* that the Fifth Circuit quoted and followed in this case. *See id.* at 465. Paribas' suggestion that *Bosch* silently overruled *West*, therefore, is plainly incorrect.

The other two cases cited by Paribas are equally far afield. In *King v. Order of United Commercial Travelers*, 333 U.S. 153, 160 (1948), the Court was concerned with the effect to be given to the decision of a state trial court that was " 'binding only upon the parties who are before the Court in that particular case and would not constitute a precedent in any other case in that Court or in any other court in the State.' " This Court held that while such a decision could be "properly attributed some weight," it was "not controlling." *Id.* at 160-61. But in so holding, the Court reaffirmed that "federal courts are bound by decisions of a state's intermediate appellate courts unless there is persuasive evidence that the highest state court would rule otherwise." *Id.* at 158. In the second case, *Bernhardt v. Polygraphic Company*, 350 U.S. 198 (1956), the Court simply followed a decision of the Vermont Supreme Court on a question of Vermont law. Neither of these cases supports Paribas' suggestion of an internal conflict in the jurisprudence of this Court.

4. Finally, Paribas urges that the decision below conflicts with *McKenna v. Ortho Pharmaceutical Corp.*, 622 F.2d 657 (3d Cir.), *cert. denied*, 449 U.S. 976 (1980), and other decisions by the Third Circuit. That asserted conflict is purely imaginary. Whereas in this case the Fifth Circuit was concerned with the weight to be given to a state intermediate appellate decision that was directly on point, in *McKenna* there was no state court decision—trial or appellate—that "specifically address[ed] or definitively resolve[d] the question at issue." *Id.* at 662 n.23. This also was true in two of the other Third Circuit cases cited by Paribas. *See Becker v. Interstate Properties*, 569 F.2d 1203, 1205 (3d Cir. 1977) ("no [state] cases are squarely on point"), *cert. denied*, 436 U.S. 906 (1978); *National Sur. Corp. v. Midland Bank*, 551 F.2d 21, 27 (3d Cir. 1977) ("no holdings by the courts of New Jersey involving the issue are presented here"). In such cases, where no clear direc-

tion has been provided by state decisional law, the Third Circuit has set forth general observations concerning how a federal court should go about deciding a question of state law. *See* Pet. 13. Those general observations are not inconsistent with the decision below.

In two other cases cited by Paribas, the Third Circuit did choose not to follow a decision by a state intermediate appellate court. But each of those cases is *sui generis*. In *Aloe Coal Co. v. Clark Equipment Co.*, 816 F.2d 110 (3d Cir.), *cert. denied*, 484 U.S. 853 (1987), the state intermediate appellate court had followed the reasoning of an earlier Third Circuit decision; the reasoning of that decision, however, subsequently had been rejected as "unsatisfactory" by this Court in *East River S.S. Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 870 (1986); the Third Circuit "conclude[d] that the United States Supreme Court's analysis is so persuasive that it will be followed by Pennsylvania courts." 816 F.2d at 117. In *Safeco Insurance Co. v. Wetherill*, 622 F.2d 685, 690-91 (3d Cir. 1980), the decision of the state intermediate appellate court appeared to be in direct conflict with a prior *per curiam* affirmance rendered in an unreported decision by the same court sitting *en banc*; the Third Circuit believed that "[u]nder these circumstances, we must make an independent judgment as to what the decision of the highest court in Pennsylvania would be;" following a careful review of state authorities the Third Circuit decided that the *en banc* court had been right, and the panel wrong, as a matter of state law. These decisions obviously afford no basis for the assertion of a conflict between the Third and Fifth Circuits.

Ever since *Erie* was handed down more than fifty years ago, federal courts have been going about the task of deciding questions of state law. In doing so, they often have been required to determine what that law is. And they frequently have described the way they go about making that determination. It is to be expected

that different courts, and even different panels of the same court, will use different verbal formulations in describing what is essentially the same intellectual process. This does not mean that there is genuine disagreement about what that process entails. There is no reason to believe, for example, that the Third Circuit would have concluded, in the face of overwhelming evidence to the contrary, that *Kerr Construction* had been wrongly decided under Texas law. The conflict that Paribas asserts simply does not exist.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submiited,

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APPENDIX

APPENDIX A

The following is a list of Exxon Corporation's affiliates and partially owned subsidiaries: *

AT&S Exploration Ltd.
Abu Dhabi Petroleum Company Limited
Ace Polymer Co., Ltd.
Aditivos Orinoco, C. A.
Adria-Wien Pipeline Gesellschaft mit beschrankter Haftung
Aircraft Fuel Supply B. V.
Aishin Sekiyu K. K.
Alberta Products Pipe Line Ltd.
Al-Jubail Petrochemical Company
Altona Petrochemical Company Limited
Alyeska Pipeline Service Company
Arabian American Oil Company
Aramco Overseas Company
Aramco Services Company
Aromatics (Thailand) Company Limited, The
Asakawa Sekiyu K.K.
Atlas Supply Company
Atlas Supply Company of Canada Limited
Australian Synthetic Rubber Company Limited
Aviation Services Saudi Arabia Limited
Awaji Gas Nenryo Kabushiki Kaisha
Azuma Sekiyu K.K.
BEB Erdgas und Erdoel GmbH, Hannover
BT Asia Securities Limited
B.W.O.C., Inc.
Bangkok Aviation Fuel Services Limited
Banshu Ekika Gas K. K.
Bayerische Erdgasleitung G.m.b.H.
Beaverhill Resources Limited
Bel-Air Entreposage S. A.

* This list does not include companies in which Exxon Corporation owns less than five percent of the stock.

BRIGITTA Erdgas und Erdoel GmbH, Hannover
Bryan Woodbine Gathering Inc.
Byron Creek Collieries (1983) Limited
Canadian Reserve Oil & Gas Ltd.
Carlew Inc.
Carnduff Gas Limited
Cary Chemicals Inc.
Castle Peak Power Company Limited
Champlain Oil Products Limited
Changi Airport Fuel Hydrant Installation Pte. Ltd.
Chinchaga Resources Limited
Chuo Sekiyu Hanbai K.K.
Clermont Coal Mines Limited
Comcor Chemicals Limited
Commercial Polymers Pty. Ltd.
Cynthia Gas Gathering Company Limited
Compania Minera Disputada de Las Condes S.A.
Comptoir Auxiliaire du Petrole
Comptoir Oxonnaxien des Combustibles (C.O.C.)
Computer Centrum Groningen B.V.
DFTG Deutsche Fluessigerdgas Terminal GmbH
Daihatsu Sekiyu K.K.
Daiichi Kouyu K. K.
Demulsificantes Del Orinoco, C.A.
Depot Petrolier du Gresivaudan
Depots de Petrole Cotiers
Depots Petrolier de la Corse
Deudan-Holding GmbH
Deutsche Erdgas Transport G.m.b.H.
Deutsche Transalpine Oelleitung G.m.b.H.
Devon Estates Limited
Divafi Pty. Limited
Dixie Pipeline Company
Dukhan Service Company
E S F Limited
Eagle Kenso K.K.
East Texas Salt Water Disposal Company
Eastcoast spill Response Inc.

Eiko Sekiyu K.K.
Elwerath Erdgas und Erdoel GmbH, Hannover
Elwerath Erdoel und Erdgas AG
Emirates Chemicals Company
Emori Sekiyu K.K.
Emsland-Erdoelleitung G.m.b.H.
Energie Marketing Service GmbH (EMS)
Entrepot Petrolier de l'Aveyron (E.P.A.)
Entrepot Petrolier de Mulhouse (E.P.M.)
Erdgas-Verkaufs-Gesellschaft m.b.H.
Esso Chemical Alberta Limited
Esso Energie G.I.E.
Esso Exploration and Production Angola Inc.
Esso Malaysia Berhad
Esso of Canada Limited
Esso Resources Canada Limited
Esso Resources Enterprises Ltd.
Esso Resources N.W.T. Limited
Esso Resources (1989) Ltd.
Esso Resources Properties Inc.
Esso Resources Ventures Limited
Esso Societe Anonyme Francaise
Esso Standard Tunisie S. A.
Establissements Cloarec
Exact Reisebyra A/S
Exxon Chemical Pakistan Limited
489061 Ontario Inc.
F. T. Giken Kabushiki Kaisha
Federated Pipe Lines Ltd.
Ferngas Nordbayern G.m.b.H.
Ferngas Salzgitter GmbH
Forjas de Colombia, S. A.
Fuji Kogyo K.K.
Gasunie Engineering B.V.
General Bussan K.K.
General Highway K.K.
General Petrochemical Industries Limited
General Sekiyu K.K.
General Sekiyu Okinawa Hanbai K.K.

General Sekiyu Overseas Ltd.
General Shipping Co. Ltd.
General Unyu Kabushiki Kaisha
Geobutane—Lavera
Gewerkschaft Brassert Erdoel und Erdgas GmbH
Gewerkschaft Erdoel-Raffinerie Deurag-Nerag
Gewerkschaft Gute Hoffnung Erdgas und Erdoel GmbH
Gewerkschaft Kuchenberg Erdgas under Erdoel GmbH
Glen Park Gas Pipe Line Company Limited
Goroku Sekiyu K.K.
Grande Ecaille Land Company, Inc.
Great Eastern Oil Limited
Groupement Immobilier Petrolier
Groupement Liants Routiers du Gard Esso-Viafrance (G.L.R.G.E.V.)
Groupement Petrolier Aviation
Groupement Petrolier de la Cote D'Azur
Groupement Petrolier de Nantes
Groupement Petrolier du Finistere G.I.E.
Hamburger Gaswerke GmbH
Hannoversche Erdoelleitung G.m.b.H.
Hanshin Kyowa Sekiyu K.K.
Hayakawa Sekiyu K.K.
Heinrich Schneider Spedition GmbH
Hiroshima General Gas Juten Kabushiki Kaisha
Hoei Sekiyu K.K.
Hokushin Bussan K.K.
Hokuyu Sekiyu K. K.
Home Energy Company Ltd.
Home Oil Company Limited
Hong Kong Pumped Storage Development Company, Limited
Houston Regional Monitoring Corporation
Hydranten-Betriebsgesellschaft
Hydrierwerke Paelitz Aktiengesellschaft
Imperial Oil Limited
Imperial Pipe Line Company, Limited, The
Inada Ekka Gas Kabushiki Kaisha

Industria Acqua Siracusana S.p.A.
Industry Promotion Enterprises Limited
Intamix Corporation
Interhome Energy Inc.
Interprovincial Pipe Line (Alberta) Ltd.
Interprovincial Pipe Line (NW) Ltd.
Intoplane Service Company Limited
Iranian Oil Participants Limited
Iranian Oil Services (Holdings) Limited
Iranian Oil Services Limited
Iraq Petroleum Company, Limited
Iraq Petroleum Pensions, Limited
Japan Butyl Company Limited
Japan Coal Liquefaction Development Company, Ltd.
Jersey Nuclear-Avco Isotopes, Inc.
K.K. Aizu General
K.K. Daimaru
K.K. General Sekiyu Hanbaisho
K.K. Genetech
K.K. Heian Sekiyu
K.K. Ito Sekiyuten
K.K. Kanagawa Sekiyu Shokai
K.K. Kyoei Agency
K.K. Kyoei Shosha
K.K. Kyowa Sekiyu Service
K.K. Marugo Izumasa Shoten
K.K. Marutaka Sekiyu
K.K. Momose Sekiyu
K.K. Nippatsu
K.K. Standard Sekiyu Osaka Hatsubaisho
K.K. Toresen
K.K. Uwano Sekiyu Shokai
K/S Statfjord Transport A/S & Co.
Kabushiki Kaisha Sankyo Plastics
Kai Tak Refuellers Company Limited
Kanto Kygnus Sekiyu Hambai K.K.
Karlsruhe-Stuttgart Rohrleitung Gesellschaft mbH
Kawasaki Kygnus Sekiyu Hambai Kabushiki Kaisha

Keihan Sekiyu K.K.
Keiyo Sekiyu Hanbai K.K.
Kenya Petroleum Refineries Limited
Kibo Sekiyu Hanbai K.K.
Kimura Sekiyu Kabushiki Kaisha
Kinwa Sekiyu K.K.
Kobe Standard Sekiyu K. K.
Kowa Sekiyu K.K.
Kowloon Electricity Supply Company Limited
Kumho E.P. Rubber Co., Ltd.
Kygnus Ekka Gas Kabushiki Kaisha
Kygnus Kosan Kabushiki Kaisha
Kygnus Marketing Service K.K.
Kygnus Sekiyu K. K.
Kyushu Eagle K.K.
LPL Investments, Inc.
La Societe Acadienne de Recherches Petrolieres SAREP
Lakehead Pipe Line Company, Inc.
LEAG Aktiengesellschaft feur luzernisches Erdoel
Les Docks des Petroles d'Ambes
Long Beach Oil Development Company
Maasvlakte Coal Terminal B.V.
Maasvlakte Olie Terminal N.V.
Magota Sekiyu K.K.
Mainline Pipelines Limited
Manito Pipelines Ltd.
Maple Leaf Petroleum Limited
Marugo Gas K.K.
McColl-Frontenac Inc.
McColl-Frontenac Oil Co. Ltd.
MEGAL FINCO
MEGAL GmbH
Meiji Sekiyu K.K.
MESBIC Financial Corporation of Houston
Metro Fuel Co. Ltd.
Mikawa Bussan K.K.
Minerals Limited

Mittelrheinische Erdgas Transport Gesellschaft mit beschreankter Haftung
Montreal Pipe Line Limited / Les Pipe-Lines Montreal Limitee
Mount Hanikris Limited
Mount Thorley Coal Loading Limited
Mr. Lube Canada Inc.
Mytex Polymers Incorporated
NAM—K 7 B.V.
NAM—K 14 B.V.
NAM—K 15 B.V.
NAM/CLOMS—K 8/K 11 B.V.
NAM/CLOMS—L 13 B.V.
NPC Services, Inc.
N. V. Nederlandse Gasunie
Nakabayashi Sekiyu K.K.
Nansei Oil Terminal K.K.
Nansei Sekiyu Kabushiki Kaisha
Nanseki Kaihatsu K.K.
Native Venture Capital Co. Ltd.
Near East Development Corporation
Nederlandse Aardolie Maatschappij B. V.
Neptune Bulk Terminals (Canada) Ltd.
Nichimo Oil (Bermuda) Co., Ltd.
Nichimo Sekiyu Seisei Kabushiki Kaisha
Nikko Sangyo K.K.
Nippon Unicar K.K.
Nisku Products Pipe Line Company Limited
Nissei Sekiyu Kabushiki Kaisha
Norddeutsche Erdgas-Aufbereitungs G.m.b.H.
Norddeutsche Mineraloelwerke Stettin G.m.b.H.
Nordrheinische Erdgas Transport Gesellschaft mit beschrankter Haftung
Noroxo
Northward Developments Ltd.
Nottingham Gas Limited
107580 Canada Inc.
151742 Canada Inc.

159129 Canada Inc.
160440 Canada Limited
160837 Canada Limited
165548 Canada Limited
165549 Canada Limited
165550 Canada Limited
165899 Canada Limited
Office Prive d'Assurances et de Courtages
Offshore Medical Support Limited
Oil Field Chemicals Company (Saudi Arabia) Ltd.
Oil Service Company of Iran (Private Company)
Oil Spill Response Limited
Oil Transport Company (Saudi Arabia) Limited
Oilship Limited
Oldenburgische Erdoel Gesellschaft m.b.H.
Osaka Ashyu Nenryou K.K.
Osaka Propane Gas Hambai Kabushiki Kaisha
Osaka Sekiyu Gas Yuso K. K.
P.A.C. S.A.R.L. (Pinson Allegret-Causse)
P. T. Stanvac Indonesia
Pars Investment Corporation
Peninsula Electric Power Company Limited
Petroleum Refineries (Australia) Proprietary Limited
Petroleum Services (Middle East) Limited
Petrosvibri S.A.
Pipe Line Services, Inc.
Plantation Pipe Line Company
Portland Pipe Line Corporation
Primaer Oel GmbH
Progas A/S
Progas Limited
Raffinerie du Midi S.A.R.L.
Rainbow Pipe Line Company, Ltd.
Redwater Water Disposal Company Limited
Refineria Petrolera Acajutla, S.A.
Rheingas Erdgasleitungs-Gesellschaft m.b.H.
Rochevert Inc.
Rotterdam Antwerpen Pijpleiding (Belgie)

Rotterdam-Antwerpen Pijpleiding (Nederland) N.V.
Rhurgas Aktiengesellschaft
S.A. du Pipeline a Produits sur Territoire Genevois (SAPPRO)
S.A.R.L. Viain
S.O.P.—Societa Oleodotti Padani S. p. A.
Saitma Sekiyu Hanbai K.K.
Sakurajima Futo K.K.
Sanyo Sekiyu K.K.
Saraco S. A.
Saudi Arabian Lube Additives Company Limited
Schubert KG
Scurry-Rainbow Oil Limited
SEAG Aktiengesellschaft fuer schweizerisches Erdoel
Seibu Kygnus Sekiyu Hambai Kabushiki Kaisha
Seismic Industries A/S
Senpoku Oil Service K.K.
SERAM Societa per Azioni
Servacar Ltd.
Shehtah Drilling Limited
Shimoyama Sekiyu K.K.
Shin-Nihon Yukagaku Kogyo K.K.
Shinohara Oil K.K.
Shizuoka Kanesho Hambai Kabushiki Kaisha
Smiley Gas Conservation Limited
Sociedad Anonima "Escuela Campo Alegre"
Sociedad de Inversiones de Aviacion
Sociedad Nacional de Oleoductos Ltda.
Societa Italiana per l'Oleodotto Transalpino S.p.A.
Societa per Azioni Raffineria Padana Olii Minerali-SARPOM
Societe Anonyme de Gestion de Stocks de Securite (SAGESS)
Societe Anonyme de la Raffinerie des Antilles
Societe Anonyme des Hydrocarbures
Societe Anonyme "Produits Lubrifiants de Madagascar" —PROLUMA S.A.
Societe Civile de Mustapha Algerie

Societe Civile de Participation pour la Destruction des Dechets Industriels (SOCDI) Immobiliere "Courcelles-Etoile"
Societe Civile Immobiliere Khariessa
Societe Civile Immobiliere "Kleber-Etoile"
Societe Civile Immobiliere "Les Casseaux-Bougainville"
Societe de la Raffinerie d'Alger
Societe de Manutention de Carburants Aviation
Societe de Manutention de Carburants Aviation Dakar-Yoff, S. A.
Societe de Promotion et de Financement Touristique (CARTHAGO)
Societe d'Entreposage de San-Pedro
Societe des Pipe-Lines de Strasbourg
Societe des Transports Petroliers par Pipe Line
Societe d'Etude et d'Exploitation de la Raffinerie du Tchad—S.E.E.R.A.T.
Societe d'Exploitation & de Development d'Operations Commerciales
Societe du Caoutchouc Butyl (SOCABU)
Societe du Pipe Line de la Raffinerie de Lorraine
Societe du Pipe-Line Mediterranee-Rhone
Societe du Pipeline Sud-Europeen
Societe Esso de Recherches et d'Exploitation Petrolieres Esso Rep
Societe Francaise Exxon Chemical
Societe "Geomines-Caen"
Societe Havraise de Manutention de Produits Petroliers
Societe Hoteliere de la Petite Campagne
Societe Immobiliere Paris-Niel
Societe Ivoirienne d'Operations Petrolieres S.A.
Societe Malgache de Raffinage
Societe Reunionnaise d'Entreposage
Socony-Standard-Vacuum Oil Company (Petroleum Maatschappij)
Southern Natural Gas Development Pty. Ltd.
Standard Kosan Kabushiki Kaisha
Standard Service K.K.

Stratfjord Transport A/S
Stockage Geologique de Gaz de Lavera
Sueddeutsche Erdgas Transport Gesellschaft mit beschraenkter Haftung
Sun East Company Ltd.
Syncrude Canada Ltd.
Synergistics Industries Limited
204383 Enterprises Limited
363011 Alberta Limited
369772 Alberta Inc.
393193 Alberta Inc.
TAR-Tankanlage Rumlang AG
TBN Tanklager-Betriebsgesellschaft Nurnberg mbH
TGF Tankdienst Gesellschaft Frankfurt
TGM Tankdienst Gesellschaft Munchen
Taglu Enterprises Ltd.
Taihei Bussan K.K.
Taiko Sekiyu K.K.
Taisei Kogyo Sekiyu Hanbai K.K.
Takahama Kosan Kabushiki Kaisha
Taketsuru Yugyo K.K.
Tanaka Sekiyu Hanbai K.K.
Tankanlage A. G., Mellingen
Tanklager Altishausen A.G.
Tanklager Gesellschaft, Koln
Tanklager-Gesellschaft Tegel
Tanklager Lechelles I S.A.
Tanklager Taegerschen AG
Tecnica Quimica Petrolera, S.A. de C. V.
Tecumseh Gas Storage Limited
Texaco Canada Malaysia Inc.
Thai Aliphatics Company Limited
THUMS Long Beach Company
Thyssengas G.m.b.H.
TIBA Speditions GmbH
Toa Nenryo Koygo Kabushiki Kaisha
Tohko Plastics Company, Limited
Tohpren Co. Ltd.

Toko Sekiyu K.K.
Tonen Energy and Marine (Singapore) Pte. Ltd.
Tonen Energy International Corp.
Tonen Maintenance K.K.
Tonen Properties Inc.
Tonen Sekiyukagaku Kabushiki Kaisha
Tonen System Plaza Kabushiki Kaisha
Tonen System Service Kabushiki Kaisha
Tonen Tanker Kabushiki Kaisha
Tonen Technology K. K.
Tonex Company Limited
Tophus Quen Pty. Ltd.
Towa Compounding Co. Ltd.
Towa Sekiyu K.K.
Toyoshina Film Company, Ltd.
Transalpine Oelleitung in Oesterreich Gesellschaft m.b.H.
Trans-Arabian Pipe Line Company
Trans-Northern Pipelines Inc.
Transgaz Lavera
Trimin Resources Inc.
Tsurumaru Unyu K.K.
Turkish Petroleum Company, Limited
UBAG - Unterflurbetankungsanlage Flughafen Zurich
Ulan Coal Mines Limited
Ulan Coal Shippers Pty. Limited
United Industry Development Co., Ltd.
United Collieries Pty. Limited
Van Salt Water Disposal Company
W.A.G. Pipeline Proprietary Limited
Wako Jushi Kabushiki Kaisha
Wako Kasei Kabushiki Kaisha
Wartempomp Nederland B.V.
Westdeutsche Erdoelleitungs-G.m.b.H.
Westgas G.m.b.H.
Westgastransport B.V.
Winnepeg Pipe Line Company Limited
Worex S.N.C.
Yasaka Sekiyu K.K.

Yellowstone Pipe Line Company
Yoshiki Sekiyu Kabushiki Kaisha
Yoshimi Gas Kabushiki Kaisha
Yuai Sekiyu K.K.
Yugen Kaisha Nishi Kobe Bosai Center